In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 379

UNITED STATES OF AMERICA ET AL., APPELLANTS

v.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC Railroad Company et al.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ILLINOIS

STATEMENT AS TO JURISDICTION ON APPEAL

In compliance with Rule 12 of the Rules of the Supreme Court, appellants submit herewith their statement showing the basis of the jurisdiction of the Supreme Court of the above-entitled case on appeal.

STATUTES

Section 5 of the Commerce Court Act (c. 309, 36 Stat. 539; U.S. Code, Suppl. III, Tit. 28, Sec. 45a).

Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938, par. (4); U.S. Code, Tit. 28, Sec. 345).

Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; U.S. Code, Tit. 28, Sec. 45 and 47a, Suppl. III).

DECREE

The decree sought to be reviewed was entered June 21, 1934.

The petition for appeal was filed and the order allowing the appeal was entered August 6, 1934.

THE NATURE OF THE CASE AND RULINGS BELOW

This suit was brought by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff, and Binkley Coal Company et al., intervening plaintiffs, to enjoin, set aside, and annul an order of the Interstate Commerce Commission, made and entered November 8, 1933, as amended by its order of April 18, 1934, in a proceeding then pending before the Commission entitled "I. & S. Docket 3843, Coal from Indiana to Illinois", 197 I.C.C. 245; 200 I.C.C. 609.

This proceeding before the Commission was initiated by the Commission following protests filed with it requesting the Commission to suspend tariffs filed by the Milwaukee, to become effective on December 23, 1922, wherein that carrier proposed to reduce its rates on bituminous coal, in carloads, from mines on its line in the Brazil-Clinton and Linton-Sullivan origin groups in Indiana from $1.87 to $1.70 to Rockford, Ill., and from $1.92 to $1.75 to Freeport, Ill., or 17 cents per net ton in

each instance. Corresponding reductions were to be made in rates to intermediate points in Illinois, on the line of the Milwaukee, the principal intermediate points being shown in a footnote on page 618 of the Commission's decision of April 18, 1934.

Following these protests, the Commission, exercising the power conferred upon it by Section 15 (7) of the Interstate Commerce Act, suspended, by order dated December 22, 1932, the tariffs proposing the reductions until July 23, 1933. By this order the Commission also entered "upon a hearing concerning the lawfulness of rates, charges, regulations, and practices stated in the said schedules. * * *." By voluntary action of the Milwaukee the effective date was further postponed until January 23, 1934. In the meantime, the hearing referred to was had and on November 8, 1933, the Commission issued its report and order (*Coal from Indiana to Illinois,* 197 I.C.C. 245) finding the proposed reductions not justified, and directing that the suspended schedules be canceled on or before January 22, 1934, and the proceeding discontinued. On January 2, 1934, the Milwaukee filed a petition for rehearing, reargument, and reconsideration before the Commission, and for an extension of the effective date of the order. On January 5, 1934, the effective date of the order was postponed until February 22, 1934, but the Commission denied the petition in all other respects. Plaintiff then filed a petition in this Court, seeking to enjoin the order

of November 8, 1933. That petition was to have been heard on February 21, 1934, but the date for hearing was postponed from time to time until April 20, 1934. On February 20, 1934, the Commission further postponed until April 23, 1934, the effective date of the outstanding order, and on March 7, 1934, reopened the proceeding for argument before it.

Following such reargument, the report and order of April 18, 1934, was issued. This decision was attacked by supplemental pleadings. The theory of the complaint was that the Commission's order was unsupported by evidence and in excess of its statutory power.

Hearing was had before a statutory court of three judges. Findings of fact and conclusions of law were made and opinions rendered, the Court holding the action of the Commission to be unsupported by evidence and to be in excess of any authority conferred upon it by the Interstate Commerce Act. A final decree was entered June 21, 1934, permanently enjoining and setting aside the Commission's order.

CASES SUSTAINING JURISDICTION

United States v. *Erie Railroad Co.*, 280 U.S. 98.

United States v. *Baltimore & Ohio R.R. Co.*, 284 U.S. 195.

I.C.C. v. *Oregon-Washington R. Co.*, 288 U.S. 14.

United States v. *Northern Pacific Ry.*, 288 U.S. 490.

ANGUS D. MACLEAN,
Acting Solicitor General,

DWIGHT H. GREEN,
United States Attorney,

HAROLD M. STEPHENS,
Assistant Attorney General,

ELMER B. COLLINS,
Special Assistant to the Attorney General,
For the United States of America.

DANIEL W. KNOWLTON,
E. M. REIDY,
For Interstate Commerce Commission.

H. H. LARIMORE,
WALTER MCFARLAND,
GUY A. GLADSON,
ELMER A. SMITH,
J. T. QUISENBERRY,
For Intervening Railroad Defendants.

U. S. GOVERNMENT PRINTING OFFICE: 1934